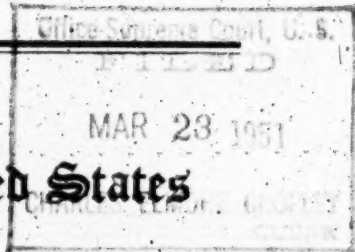


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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 565.

RADIO CORPORATION OF AMERICA, NATIONAL
BROADCASTING COMPANY, INC., RCA VICTOR
DISTRIBUTING CORPORATION, et al.,

Appellants,

against

UNITED STATES OF AMERICA, FEDERAL COM-
MUNICATIONS COMMISSION, AND COLUMBIA
BROADCASTING SYSTEM, INC.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

MOTION FOR EXTENSION OF STAY.

March 23, 1951.

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 565.

RADIO CORPORATION OF AMERICA, NA-
TIONAL BROADCASTING COMPANY, INC.,
RCA VICTOR DISTRIBUTING CORPORA-
TION, *et al.*,

Appellants,

against

UNITED STATES OF AMERICA, FEDERAL
COMMUNICATIONS COMMISSION, and
COLUMBIA BROADCASTING SYSTEM,
INC.,

Appellees.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

MOTION FOR EXTENSION OF STAY.

Appellants respectfully move that the Court enter an order extending until further order of the Court the stay granted by the District Court until April 1, 1951, or until terminated by this Court, against the order of the Federal Communications Commission (herein called the Commission) here involved, in order to preserve the *status quo* on appeal.

1. This temporary restraining order and the findings of fact and conclusions of law which were entered by the District Court are attached hereto as Appendix A.

2. In unanimously entering its temporary restraining order, the court below stated:

"Thus concluding that the matter of a further stay of the Commission's order is discretionary, we shall state some of the reasons which move us to preserve the status quo. Of the nine million black and white television receivers in the hands of the public, there are none capable of receiving a picture either in color or black and white, broadcast under the proposed standards. In order to receive a black and white picture, it is necessary that a receiver be equipped with an adapter estimated to cost \$50.00, plus the expense of installation. In other words, it would cost the American public nearly one-half billion dollars to equip existing sets to receive, under the proposed system, black and white pictures, and even then admittedly they would be of a grade inferior to present black and white pictures. In addition, in order to receive a picture in color, it will be necessary to add to an existing receiver a converter, estimated to cost about \$100.00, plus the expense of installation. Thus, this will cost the public nearly one billion dollars. In other words, upon an expenditure by the public of one and one-half billion dollars, adapters and converters can be added to existing receivers so as to receive, under the proposed system, pictures in black and white and in color.

"But this is only a part of the story insofar as it relates to the public. It was here stated in oral argument and not disputed that there are no adapters or converters on the market and that manufacturers would require a period of from six to eight months before they could be made available. So it seems

reasonable to conclude that if the instant order was now in effect, there would be no broadcasting under the proposed standards for many months, for the simple reason that there would be no sets capable of receiving such programs. And it does not square with common sense to think that manufacturers would rush into the business either of manufacturing adapters and converters for existing sets or manufacturing sets with built-in adapters and converters while this controversy is pending. And to maintain that the public in any considerable number would purchase adapters and converters, assuming they were available, under the existing state of doubt and uncertainty, is to cast a reflection on the intelligence of people.

• • • • •

"Another reason why this order should be stayed is the existing economic situation, recognized by Commissioner Sterling in his dissenting opinion, wherein he stated, 'The problems confronting manufacturers today in terms of production, procurement and manpower to meet the demands of national defense are serious ones. * * * It is well known that there are serious shortages of tubes and resistors as well as basic materials. * * * Moreover, in many instances industry has been required to divert its TV engineering experts to problems of production for defense because of the close relationship of TV techniques to radar and other electronic devices the government requires.' It is a matter of common knowledge that the situation thus described becomes more acute with each passing day, and the prospects are that it will be far worse before it is better. It is hardly conceivable that either the Commission or the government would under such circumstances desire, much less insist, that the order in controversy be made effective" (R. 876-78).

3. Extension of the stay is required in the public interest to maintain the *status quo* pending the decision by this Court on this appeal.

Respectfully submitted,

JOHN T. CAHILL,
Counsel for Appellants,
Radio Corporation of America,
National Broadcasting Company, Inc.,
and RCA Victor Distributing Corporation.

SIMON H. RIFKIND,
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B. C. SCHIFF,
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FRANK S. RIGHEIMER, JR.,
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Wells-Gardner & Co.

CARL POMERANCE,
Counsel for Intervener-Appellant,
Sightmaster Corporation.

ALFRED KAMIN,
Counsel for Intervener-Appellant,
Local 1031, International Brotherhood
of Electrical Workers, AFL.

GERALD RATNER,
Counsel for Intervener-Appellant,
Television Installation Service Association.

March 23, 1951

Appendix A.

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS, EAST-
ERN DIVISION**

No. 50 C 1459

**RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING
COMPANY, INC., AND RCA VICTOR DISTRIBUTING CORPORA-
TION, *Plaintiffs,***

vs.

**UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS
COMMISSION, *Defendants***

Order.

This cause having come on to be heard on plaintiffs' motion for interlocutory injunction and for a temporary restraining order, and on defendants' motion for summary judgment and to dismiss the Complaint, and the Court having heard the arguments of counsel and having considered the briefs filed herein, and the Court being fully advised in the premises,

It is hereby ordered that the temporary restraining Order entered November 16, 1950 restraining and suspending the promulgation, operation and execution of the Order of the Commission of October 10, 1950, be and it hereby is continued in full force and effect until April 1, 1951, or until terminated by the Supreme Court of the United States, and the findings of fact and conclusions of law heretofore made in support of said temporary restraining order are hereby re-adopted.

It is further ordered that a summary judgment be and it hereby is entered in favor of the defendants and against the plaintiffs and the complaint is dismissed.

J. EARL MAJOR,

*Judge, United States Court of
Appeals, Seventh Circuit.*

PHILIP L. SULLIVAN,

*Judge, United States District
Court.*

Dissenting:

WALTER J. LABUY,

*Judge, United States District
Court.*

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

Civil Action No. 50 C 1459

**RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING
COMPANY, INC., AND RCA VICTOR DISTRIBUTING CORPORA-
TION, *Plaintiffs,***

against

**UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS
COMMISSION, *Defendants***

Findings of Fact and Conclusions of Law:

This cause coming on to be heard on the 14th and 15th days of November, 1950, upon a motion of plaintiffs for an interlocutory injunction, and for a temporary restraining order from and after November 20, 1950 in the event the motion for an interlocutory injunction is not determined by that date, which motion has been adopted and joined in by interveners Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, Wells-Gardner & Co., Sightmaster Corporation, The Radio Craftsmen Incorporated, Television Installation Service Association, and Local 1031, International Brotherhood of Electrical Workers, AFL, and upon motions by defendants and the intervener, Columbia Broadcasting System, Inc. to dismiss the Complaint, or in the alternative for summary judgment, before the Honorable J. Earl Major, Chief Judge of the United States Court of Appeals, Seventh Circuit, and the Honorable Philip L. Sullivan and Walter J. LaBuy, Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, and upon all pleadings,

affidavits and documents filed by the parties and upon consideration thereof and of the arguments of counsel for the respective parties, the Court, being advised in the premises, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT.

1. The Federal Communications Commission (hereinafter called the Commission) on October 10, 1950 adopted an Order amending the Commission's "Standards of Good Engineering Practice Concerning Television Broadcast Stations". The order adopted the color television system of the intervenor, Columbia Broadcasting System, Inc., and precludes the transmission of the color television system proposed by plaintiff Radio Corporation of America and of all other proposed systems other than the one adopted.

2. The Order, to become effective on November 20, 1950, provides for the commercial broadcasting of color television on standards which are different from the existing standards for the commercial broadcasting of black and white television, which have been in effect since 1941.

3. There are now in the hands of the public approximately 9,000,000 black and white television receivers, none of which can receive any programs broadcast in accordance with the new standards promulgated by the Order.

4. To protect the service which they have been getting, the owners of these 9,000,000 black and white television receivers would have to spend millions of dollars in order to adapt their sets to receive programs broadcast on the new standards.

5. After such adaptation, programs broadcast under the new standards would be received only as a black and white picture having less than one-half the picture detail of the existing black and white service.

6. For the public to both adapt and convert the existing 9,000,000 television receivers so that they would receive in color the programs broadcast in accordance with the new standards would cost many more millions of dollars.

7. Plaintiffs, on October 17, 1950, brought this action to enjoin, set aside, annul and suspend the Commission's Order of October 10, 1950.

8. Plaintiffs have moved for an interlocutory injunction to restrain and suspend the promulgation, operation and execution of the Order, and for a temporary restraining order from and after November 20, 1950, in the event the motion for an interlocutory injunction is not determined by that date.

9. The pending action in which this motion is made has been brought pursuant to the provisions of Section 402(a) of the Communications Act of 1934, as amended (47 U.S.C. Sec. 402(a) and of Title 28, United States Code (28 U.S.C. Secs. 1336, 1398, 2284, 2321-25), and of Section 10 of the Administrative Procedure Act (60 Stat. 243; 5 U.S.C. Sec. 1009), providing for the judicial review of orders of the Commission of the kind here involved, and for the issuance of temporary relief against injury caused thereby.

10. Plaintiffs' motion for an interlocutory injunction and for a temporary restraining order has been adopted and joined in all by all parties who have intervened seeking to vacate, set aside, suspend and annul the Commission's Order of October 10, 1950.

11. The Court, while having been advised in the premises, has not had sufficient time to consider fully the issues raised by the verified complaints and the affidavits filed by the parties prior to November 20, 1950, the effective date of the Commission's Order.

12. The plaintiffs and interveners, representing manufacturers, employees, a distributor, a television broad-

caster, a proponent of a color television system, set owners and television servicemen will suffer irreparable damage if the Commission's Order is not restrained or suspended during the consideration and determination of the motion for an interlocutory injunction, by virtue of the impairment of the market acceptance of present television receivers and by virtue of the inability of present television receivers to receive any broadcast on the standards adopted by the Order without substantial expenditures which may prove to be useless. The foregoing is shown by: the affidavits of C. B. Jolliffe, sworn to on November 8, 1950; Walter A. Buck, sworn to on November 8, 1950; John H. McDonald, sworn to on November 8, 1950; Walter M. Norton, sworn to on November 9, 1950; Richard L. Hirsch, sworn to on November 13, 1950; Harold V. Levin, sworn to on November 13, 1950; and J. O. Reinecke, sworn to on November 13, 1950; the verified Complaints of Emerson Radio & Phonograph Corporation, Wells-Gardner & Co., The Radio Craftsmen Incorporated, Television Installation Service Association, and Local 1031, International Brotherhood of Electrical Workers, AFL; and all other affidavits submitted in this action.

13. The temporary suspension of the aforesaid Order of the Federal Communications Commission pending a determination of the aforesaid motion for an interlocutory injunction will be in the public interest.

CONCLUSION OF LAW.

Plaintiffs' motion for a temporary restraining order restraining and suspending until further order of this Court the promulgation, operation and execution of the Order

of the Federal Communications Commission adopted October 10, 1950, effective November 20, 1950, should be granted.

Enter:

J. EARL MAJOR,
*Judge of the United States Court
of Appeals, Seventh Circuit;*

PHILIP L. SULLIVAN,
*Judge of the United States
District Court;*

WALTER J. LA BUY,
*Judge of the United States
District Court.*

Dated: Nov. 16, 1950.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

Civil Action No. 50 C 1459

**RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING
COMPANY, INC.**

and

RCA VICTOR DISTRIBUTING CORPORATION, *Plaintiffs*

against

**UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS
COMMISSION, *Defendants***

Temporary Restraining Order.

Plaintiffs' motion for an interlocutory injunction and for a temporary restraining order from and after November 20, 1950 in the event the motion for an interlocutory injunction is not determined by that date, which motion has been adopted and joined in by interveners Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, Wells-Gardner & Co., Sightmaster Corporation, The Radio Craftsmen Incorporated, Television Installation Service Association, and Local 1031, International Brotherhood of Electrical Workers, AFL, and defendants' and intervener's (Columbia Broadcasting System, Inc.) motions to dismiss the Complaint, or in the alternative for summary judgment, having come on for hearing before the Court, and the Court not having had sufficient time to consider fully the issues raised and the verified complaints and affidavits filed by the parties, and having determined that irrepa-

able damage will result if the promulgation, operation and execution of the Order of the Federal Communications Commission adopted October 10, 1950, is not restrained and suspended pending determination of the motion for an interlocutory injunction and the aforesaid motions to dismiss the Complaint, or in the alternative for summary judgment, and the Court having made its Findings of Fact and Conclusions of Law to such effect, it is hereby

Ordered that the motion for a temporary restraining order, restraining and suspending until further order of this Court the promulgation, operation and execution of the Order of the Federal Communications Commission adopted October 10, 1950, effective November 20, 1950, be and it hereby is granted; and it is further

Ordered that the promulgation, operation and execution of the aforesaid Order of October 10, 1950 be and the same hereby is restrained and suspended pending the further order of this Court.

Enter:

J. EARL MAJOR,
*Judge of the United States Court
of Appeals, Seventh Circuit;*

PHILIP L. SULLIVAN,
*Judge of the United States Dis-
trict Court;*

WALTER J. LABUY,
*Judge of the United States Dis-
trict Court.*

Dated: November 16, 1950.